

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF DELAWARE

- - -

JAMES H. GORBEY, JR., : CIVIL ACTION  
Administrator of the  
ESTATE of MARISSA ROSE : NO. 04-4098  
FISHMAN, Deceased

:  
-vs-

RICHARD LONGWELL

L.C.P. g

:

- - -

JAMES H. GORBEY, JR., : CIVIL ACTION  
Administrator of the  
ESTATE of MARISSA ROSE : NO. 04-4118  
Deceased

:  
-vs-

ASHLAND CONSTRUCTION  
COMPANY, INC., et al :

:

- - -

Oral deposition of JAMES H. GORBEY,  
JR., ESQUIRE, taken on behalf of the Defendant,  
Richard Longwell, in the Law Offices of MURPHY,  
SPADARO & LANDON, 1011 Centre Road, Wilmington,  
Delaware, on Wednesday, April 5, 2006, commencing  
at or about 1:10 p.m., before Colleen A. Young,  
Court Reporter - Notary Public.

- - -

B & R SERVICES FOR PROFESSIONALS, INC.  
235 SOUTH 13th STREET  
PHILADELPHIA, PENNSYLVANIA 19107  
(215) 546-7400  
B&R Services for Professionals, Inc.

1           funeral expenses, including the burial and the  
2           tombstone, and the flowers, the church, or  
3           whatever. There would be the stone inscription  
4           of the stone. All the little things that you  
5           make sure people are taking care of.

6                         And then you have, quite frankly,  
7           my bill. You know, my job is to say this is what  
8           I've done. And when I say I have to be flexible,  
9           again, it depends on the size of the estate. If  
10          I have a very small estate and I have all sorts  
11          of time in it, but there are heirs, the judge may  
12          not give me all the money I want. If there is a  
13          big estate then there is a formula.

14                         For instance, if you get into a  
15          million dollar estate, there is a case in  
16          Pennsylvania that lawyers who do this work rely  
17          on called the Johnson Estate. And it sets forth  
18          how you're paid. It basically says you've got  
19          seven percent, I think on the first hundred, and  
20          six percent on the next 50, and five percent, and  
21          then you get to that point where you are at three  
22          percent on the rest. And I think that's  
23          somewhere around \$250,000. That's how you're  
24          paid. Always subject to court approval.

1                         Now, with respect to the litigation  
2 lawyers, you know, the court that does their  
3 litigation takes care of that.

4 Q.       Am I to understand that in a case like this  
5 where we have a deceased child, after the payment  
6 of the fees and the various attorneys involved,  
7 and the costs that you described, under the  
8 testacy statute that money, the money that is  
9 left over, would be divided among existing or  
10 living relatives? According to our statute?

11 A.      Parents first.

12 Q.      Parents first.

13 A.      Parents can renounce their right to receive  
14 it in favor of someone else. It's not like they  
15 don't have any choice about it.

16 Q.      You mentioned earlier a 50/50 split between  
17 the parents. Would that be standard?

18 A.      Pretty standard, yes. There can be  
19 exceptions, if there are child support issues  
20 unpaid. I've never had this one, but I mean  
21 there are questions of abandonment, but in this  
22 case I don't think so.

23                         I told you I do a lot of domestic  
24 relations work, so I've seen the parties in

JAMES H. GORBEY, JR., ESQUIRE

36

1           that.

2       Q.     When you're hired -- and your duty as the  
3           administrator of the estate at that point is to  
4           administer the estate and determine whether there  
5           are assets, to determine whether there are  
6           liabilities, and perform the functions that an  
7           administrator is suppose to perform by law?

8       A.     Irrespective of the feelings of family  
9           members.

10      Q.     Okay.

11      A.     Correct.

12      Q.     So it wouldn't matter whether mom or dad  
13           wanted you to do anything in particular in terms  
14           of filing a lawsuit, they don't have the power to  
15           tell you what to do, correct?

16      A.     I think that the only thing that they can  
17           do is petition to remove me, and that would  
18           probably be spurious under the circumstances  
19           today. Or wait until after the litigation to see  
20           if there is an asset and then object to the  
21           proposed distribution that I would make.

22                          In other words, going back to the  
23           audit process, when everything is over, you  
24           finished your advertising, there are forms that

1       you fill out for the orphans court, they're easy  
2       for the Delaware lawyers to look at, they're in  
3       our rule book. You fill out that form, you list  
4       it with the orphans court, you send notice out to  
5       the heirs, and they have plenty of time to object  
6       to whatever you are saying. And even if they  
7       don't file written objections, they can show up  
8       in court and object, and the court will then set  
9       a date for either a conference, or a mediation,  
10      or trial, or all of the above.

11      Q.     I'm just trying to figure out, make sure I  
12      am clear on your both legal and ethical  
13      obligations as the administrator of the estate,  
14      which all of those obligations run to the estate?

15      A.     That's correct.

16      Q.     Okay. So all decisions that you make with  
17      respect to pursuing or not pursuing litigation  
18      are decisions that you make on behalf of the  
19      estate, and in your view are in the best  
20      interests of the estate?

21      A.     That's correct.

22      Q.     Okay.

23      A.     I am aware. You know, I sign pleadings,  
24      so...

JAMES H. GORBEY, JR., ESQUIRE

38

1 Q. And --

2 A. But I wasn't aware of that when I was  
3 appointed.4 Q. In this case, you as the administrator of  
5 the estate are the client of Kline & Specter?

6 A. Yes.

7 Q. And you as the administer of the estate,  
8 were there to be, hypothetically, a settlement  
9 offer, would have to make the ultimate decision  
10 as to whether to accept or reject that offer on  
11 behalf of the estate?12 A. I don't know what your procedure is in  
13 Delaware. In Pennsylvania I would say it's a  
14 qualified yes. I would have to make the initial  
15 decision that that was an appropriate offer, and  
16 then we would petition the court for court  
17 approval. At that point, the parents could come  
18 in and object if they didn't like the offer.19 Q. How does that -- how quickly does that  
20 procedure proceed, in your experience?21 A. Well, in Delaware County, I've seen it done  
22 two ways, and in Philadelphia County I've seen it  
23 done two ways, Chester County. You can say what  
24 you do mean, two ways.

JAMES H. GORBEY, JR., ESQUIRE

44

1       in my firm, and he was my father's law clerk  
2       before he was the orphans law clerk, and he is in  
3       my building.

4                  I am just saying I do this every  
5       day. And the judge tries to get his clerks to  
6       hammer out a settlement. If that doesn't work  
7       you get a real trial. Not a jury trial, but you  
8       get a real hearing.

9       Q.       Has Rochelle Fishman renounced her right to  
10      receive any share of the estate that might exist  
11      at the end of the day?

12      A.       I have not received -- as of the time we're  
13      speaking I have not received any such  
14      renunciation or anything like that, whether it's  
15      called -- no matter what it is called.

16      Q.       Nor has -- I take it, nor has Eric Fishman?

17      A.       I have had no direct communications, to my  
18      knowledge, with either of them.

19      Q.       Talking about the fees that you're entitled  
20      to collect as the administrator in a large  
21      estate, if -- I want to make sure I understand  
22      that.

23                  Let's just say for the sake of  
24      argument you got --

Case 1:05-cv-00211-MPT Document 90-6 Filed 05/04/2006 Page 8 of 8